* **HIGH COURT OF DELHI : NEW DELHI**

\+ **ITA No. 1384 of 2006**

Judgment reserved on: May 9, 2007

% Judgment delivered on: May 23, 2007

The Commissioner of Income Tax, Delhi-X
New Delhi ...Appellant

Through Ms. P.L. Bansal with Ms. Sonia Mathur, Advocates

Versus

Shri Atul Jain
1188, Chatta Madan Gopal
Maliwara, Delhi ...Respondent

Through Dr. Rakesh Gupta with Mr. Jitender Saini, Advocates

WITH

2. ITA No. 1385 of 2006

The Commissioner of Income Tax, Delhi-X
New Delhi ...Appellant

Through Ms. P.L. Bansal with Ms. Sonia Mathur, Advocates

Versus

Smt. Vinita Jain
1188, Chatta Madan Gopal
Maliwara, Delhi ...Respondent

Through Dr. Rakesh Gupta with Mr. Jitender Saini, Advocates

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

MADAN B. LOKUR, J.

The Revenue is aggrieved by an order dated 2nd March, 2006 passed by the Income Tax Appellate Tribunal, Special Bench SMC, New Delhi in ITA No.4824-25/Del/2004 relevant for the assessment year 1997-98.

2. The assessees had purchased shares of M/s Globe Commercials Ltd. through M/s Maheshwari Sons, stock and share broker. Subsequently, these shares were sold at a much higher value through another broker Satish Kumar Goel, proprietor of R.K. Aggarwal & Co. The assessees had disclosed long term capital gains arising from the transaction.

3. It appears that some intra-departmental information was received by the Assessing Officer to the effect that the assessees had taken a bogus entry of long term capital gain after paying the equivalent amount in cash together with premium for the accommodation entry to Satish Kumar Goel. This information was received from the Deputy Director of Income Tax (Investigation), Gurgaon. Based on the information received, the Assessing Officer took action to issue a notice under Section 148 of the Income Tax Act, 1961 (the Act) to the assessees.

4. In the case of Smt. Vinita Jain, the reasons for issuing a notice, as recorded by the Assessing Officer, read as follows:

> "As per information received from DDIT (Inv.) Gurgaon, the assessee had taken bogus entry of capital gains Rs.2,12,635/- on 27.6.95 (A.Y. 1997-98) by paying cash along with some premium and taking cheque of same amount."

Similarly, in the case of Atul Jain, the reasons for issuing a notice are as follows:

> "As per information received from DDIT (Inv.) Gurgaon, the assessee had taken bogus entry of capital gains Rs.1,08,845/- on 22.6.96 (A.Y. 1997-98) by paying cash along with some premium and taking cheque of same amount."

5. The concerned files were then put up before the Commissioner of Income Tax and in response to the question whether the Commissioner was satisfied that income had escaped assessment, he wrote “Yes”.

6. As one would expect, the income of the assessees was then re-assessed by the Assessing Officer who thereupon issued a demand notice and also sought to charge interest and levy penalty upon the assessees.

7. Both the assessees preferred appeals before the Commissioner of Income Tax (Appeals) [CIT (A)] and by separate orders, the CIT (A) partly allowed the appeals filed by the assessees. Feeling aggrieved, the assessees then approached the Tribunal which decided the appeals in their favour and concluded that the initiation of proceedings was vitiated. Accordingly, the assessment made was annulled and the appeals allowed.

8. The Revenue has preferred two separate appeals against the

combined order passed by the Tribunal. We heard submissions made by learned counsel for the parties and are of the view that there is no error in the opinion expressed by the Tribunal and that no substantial question of law arises for our consideration.

9. Broadly speaking, the view taken by the Assessing Officer (and which is canvassed before us) was that the assessees had invested their money received from undisclosed sources and taken back the amounts through a negotiable instrument. The amounts so invested were treated as undisclosed income and the Assessing Officer estimated 10% commission for the accommodation entry and thereupon made a further addition to the undisclosed investment.

10. For deciding whether the issuance of notice is vitiated or not, our attention has been drawn to ***Chhugamal Rajpal v. S.P. Chaliha & Ors., (1971) 79 ITR 603***. In that case, re-assessment proceedings were struck down by the Supreme Court on the ground that in the reasons recorded by him, the Income Tax Officer had vaguely referred to certain communications that he had received; he did not mention the facts

contained in those communications except that from those communications “it appears that these persons (alleged creditors) are name lenders and the transactions are bogus”; he did not come to any prima facie conclusion that the referred transactions are not genuine; he appeared to have a vague feeling that the referred transactions may be bogus transactions and finally, his conclusion was to the effect that a proper investigation regarding the loans is necessary. The Supreme Court was of the view that the conclusion of the Income Tax Officer was that there is a case for investigating the truth of the alleged transactions but that is not the same thing as reasons for issuing a notice under Section 148 of the Act. In the decision of the Supreme Court also, when the matter was sent to the Commissioner, in the proforma against the question “Whether the Commissioner is satisfied that it is a fit case for the issue of notice under Section 148” he noted “Yes” and affixed his signatures. The Supreme Court was of the view that upon reading the report given by the Income Tax Officer (which is not the same as reasons for issuing a notice), the Commissioner could not have come to the conclusion on the material before him that it is a fit case for issuance of a notice under Section 148 of the Act.

11. From the decision of the Supreme Court, it is clear that a mere statement of facts in the form of a report is not a substitute for reasons that are required to be recorded before issuing a notice under Section 148 of the Act. The Supreme Court also noted that substance cannot be substituted by form and it is in that context that the Supreme Court expressed the view that by merely saying "Yes", the Commissioner did not fulfill the duty cast upon him.

12. In ***P. Munirathnam Chetty and P. Satyanarayana Chetty v. Income-tax Officer, (1975) 101 ITR 385***, the Andhra Pradesh High Court analyzed ***Chhugamal Rajpal*** and distinguished it on the ground that since the Income Tax Officer had given reasons for issuing a notice to the assessee, the mere fact that the Commissioner recorded "Yes" in respect of the question "Whether the Commissioner is satisfied that it is a fit case for issue of notice under Section 148" would not by itself vitiate the proceedings. What follows from this is that if there are reasons recorded for issuing a notice and the Commissioner applies his mind to those reasons and even if he merely says "Yes" in respect of his satisfaction, that is good enough; but if reasons are not recorded by the

Assessing Officer (as in ***Chhugamal Rajpal***) then in any case the proceedings would be vitiated, and even if the Commissioner says "Yes" in the appropriate column, that would not save the notice from being vitiated.

13. The above two decisions lead to the conclusion that there must be reason to believe warranting the issuance of a notice by the Assessing Officer. If there are no reasons, then the entire foundation for initiating the proceedings is bad and the notice initiating proceedings must be quashed.

14. At this stage, it is worth recalling that in ***Ganga Saran & Sons Pvt. Ltd. v. Income-tax Officer & Others, (1981) 130 ITR 1,*** the Supreme Court noted that the expression "reason to believe" as occurring in Section 147 of the Act is stronger than the expression "is satisfied". In other words, mere satisfaction of the Assessing Officer for the issuance of a notice is not enough – there must be reasons on record which have led him to believe that a notice should be issued.

15. In ***United Electrical Co. Pvt. Ltd. v. Commissioner of Income-tax, (2002) 258 ITR 317***, this Court considered the entire issue afresh. It was observed that the expression "reason to believe" occurring in Section 147 of the Act is crucial. Reference was made to ***Bawa Abhai Singh v. Deputy Commissioner of Income Tax, (2002) 253 ITR 86*** wherein it was observed that "reason to believe" postulates a foundation based on information and a belief based on reasons. In so far as "information" is concerned, a Division Bench of this Court held in ***L.R. Gupta v. Union of India, (1992) 194 ITR 32*** that:

> "The expression 'information' must be something more than a mere rumour or a gossip or a hunch."

Of course, this was in the context of Section 132 of the Act but as held in ***United Electrical***, the logical is equally applicable to a case under Section 147 of the Act.

16. After a foundation based on information is set up, there must still be some reasons which warrant the holding of a belief so as to necessitate the issuance of a notice under Section 148 of the Act.

17. Looked at in the light of the decisions placed before us and

the law laid down therein, it is necessary to appreciate the information available with the Assessing Officer in the present case. The only information is that the assessees had taken a bogus entry of capital gains by paying cash along with some premium for taking a cheque of that amount. The information does not indicate the source of the capital gains (which in this case are shares). We do not know which shares have been transacted and with whom has the transaction taken place. There are absolutely no details available and the information supplied is extremely scanty and vague. In so far as the basis for the reasons is concerned, even this is absent. The Assessing Officer did not verify the correctness of the information received by him but merely accepted the truth of the vague information in a mechanical manner. The Assessing Officer has not even recorded his satisfaction about the correctness or otherwise of the information or his satisfaction that a case has been made out for issuing a notice under Section 148 of the Act. Read in this light, what has been recorded by the Assessing Officer as his "reasons to believe" is nothing more than a report given by him to the Commissioner of Income Tax. As held by the Supreme Court in ***Chhugamal Rajpal***, the submission of a report is not the same as

recording of reasons to believe for issuing a notice. The Assessing Officer has clearly substituted form for substance and, therefore, the action of the Respondent falls foul of the law laid down by the Supreme Court in ***Chhugamal Rajpal*** which is clearly applicable to the facts of these appeals.

18. For these reasons, we are of the view that there is no error in the decision rendered by the Tribunal and no substantial question of law has arisen for our consideration. Therefore, the appeals are dismissed.

Madan B. Lokur, J

May 23, 2007 V.B. Gupta, J
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Certified that the corrected copy of the judgment has been transmitted in the main Server.